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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,044	11/30/2001	Andrew Terrance Kevin Dewberry	1998-2-3	7836

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GRAYBEAL, JACKSON, HALEY LLP  
155 - 108TH AVENUE NE  
SUITE 350  
BELLEVUE, WA 98004-5901

EXAMINER

NGUYEN, THUKHANH T

ART UNIT PAPER NUMBER

1722

DATE MAILED: 09/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/010,044

Applicant(s)

DEWBERRY, ANDREW  
TERRANCE KEVIN

Examiner

Thu Khanh T. Nguyen

Art Unit

1722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 & 6. 6) ☐ Other: \_\_\_\_

### DETAILED ACTION

1. Claims 12 (second occurrence) to claims 22 are renumbered as claims 13-23 according to rule 126. For purpose of examination, the dependency of claims 15-23 has been shifted down 1 claim. Clarification and/or correction are required.

2. Claim 21 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 1.

When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 7, 11, 13, and 20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Liberman (5,792,489).

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Liberman teaches a plaster spreading tool, comprising a gripping body (20), an elongated, resilient channel member (60) on the body for retaining and pressing a line of material into a recess or a corner, a finishing portion (22, 24) on the body for compressing and shaping the material after delivery of material; wherein the channel member (60) is mounted to at least two anchor points on the body (141a) by a resilient band (142), in which the finishing portion of the body is position after the channel member (Fig. 1).

5. Claims 1, 10-13 and 20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Woolley (5,471,704).

Woolley teaches a caulking tool comprising a body (38, 40), an elongated rubber channel member (90; col. 5, lines 2-5) for retaining and pressing material into the recess, a pressing member (44) attached to the body for compressing and shaping the material (col. 5, lines 11-15), means for scrapping and removing excess material (22, 48; col. 4, lines 57-64); wherein the pressing member and the channel member are arranged on different regions of the body, and the pressing member comprises a projection (44) extending from the body having distal end surface to compress and shape the material on dragging the pressing member along the recess (col. 4, lines 47-56).

6. Claim 22 is rejected under 35 U.S.C. 102(b) as being anticipated by Lindskog (4,185,950).

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Lindsborg teaches a mastic applying apparatus, comprising a gripping body (32), a compressing member (42) extending from the body to compress and shape the material in the recess, and a scraping means (56) for removing excess material.

7. Claims 1-2, 11-13, and 20-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Volk (6,595,764).

Volk teaches a drywall finishing tool, comprising a gripping body (100), an elongated, resilient channel member (102) on the body for retaining and delivering the material into a joint, a finishing portion (123, 124) for compressing and shaping the material (col. 3, lines 10-21); wherein the channel member is mounted to the body to extend in an arcuate configuration over the length of the channel (Fig. 2, 102), a scraping portion (127) to collect and remove excess material (col. 4, lines 60-65).

***Allowable Subject Matter***

8. Claims 3-6, 8-9, 14-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. The following is a statement of reasons for the indication of allowable subject matter: the prior art fails to teach or suggest that the channel member comprises a pair of spaced side walls that define an elongate cavity facing away from the body to receive a line of grout; or the body includes an arcuate surface and the resilient channel member is mounted adjacent the arcuate surface with imparts an arcuate shape to the channel member over the length of the channel member; or a scraping portion includes a resilient surface to engage the tile.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Khanh T. Nguyen whose telephone number is 703-305-7167.

The examiner can normally be reached on Monday- Friday, 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L Walker can be reached on 703-308-0457. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

TN

  
ROBERT DAVIS  
PRIMARY EXAMINER  
GROUP 1300-1700

9/15/03